



PANELIST: ADVOCATE J P HANEKOM

CASE NO: PSCB209 -12/13

AWARD DATE: 16 OCTOBER 2012

In the matter between:

POPCRU obo GUSHU

Applicant

and

DEPARTMENT OF CORRECTIONAL SERVICES NATIONAL

Respondent

ARBITRATION AWARD

DETAILS OF THE HEARING AND REPRESENTATION:

1. This matter was set down for arbitration in on 25 September 2012 at Brandvlei Correctional Facility. The dispute related to the interpretation and application of a collective agreement (Resolution of 2000 – hereinafter referred to as the “Resolution”). Mr.. Xolani Matshoba, union official of POPCRU represented the Applicant Mr. Lumphondo of Legal Services within the Department represented the Respondent.

ISSUE TO BE DECIDED:

2.
 - (1) Whether the instant dispute related to the interpretation and/or application of the Resolution;
 - (2) If so, whether the Respondent correctly interpreted and/or applied the

Resolution.

HISTORICAL BACKGROUND:

3. The Applicant is employed as a correctional officer at Brandvlei Prison. The Applicant was booked to work first watch (15h00 until 23h30) from 22 March 2012.
4. On 21 March 2012 at approximately 10h00 the Applicant approached Staff Support to enquire as to why he (Applicant) was separated from the lift club members who was booked for night duty. The Applicant informed Staff Support that he was going to experience transport problems to come to work. Brandvlei Prison is a farm prison and there is no public transport from where he stays in Worcester to work.
5. On 22 March 2012 when the Applicant was supposed to start work at 15h00 he phoned the duty office to inform them about his situation that he was without any transport. The Applicant then requested Mr. Horn to grant him a day's leave after he explained his problem to Mr. Horn. This request was refused and the Applicant was informed that he would be booked leave without pay for this specific day.
6. Accordingly, the Applicant referred the matter to the Council as a dispute related to the interpretation and application of paragraph 7.10 of the Resolution that deals with unpaid leave.

EVIDENCE AND ARGUMENT BY THE APPLICANT:

7. The Applicant did not lead any verbal evidence, but submitted documentary evidence and written argument in support of his case. I have decided to summarise the evidence and argument as far as I consider relevant for the purpose of my award.
8. It was Applicant's argument that the employer should have deducted one day's leave from the Applicant's leave credits in terms of paragraph 7.10 of the Resolution. Accordingly the employer acted contrary to the Resolution by deducting the amount

or R358,

9. 85 from the Applicant's salary. The Applicant therefore requested that the Respondent is ordered to repay the amount in question.

ARGUMENT BY THE RESPONDENT:

10. The Respondent also did not lead verbal evidence, but made verbal argument and submitted documentary evidence in support of its case. Mr. Lufhondo for the Respondent never submitted written argument as requested in addition to his verbal argument. Again I have again decided to summarise evidence and argument as far as I consider relevant for the purpose of my award.
11. It was the Respondent's verbal argument that the dispute in question did not relate to the interpretation and application of the Resolution. According to Mr. Lufhondo the Resolution deals with leave and applications for leave, whereas the instant dispute relates to failure to report for duty and therefore leave without pay.

ANALYSIS OF THE EVIDENCE AND ARGUMENTS:

12. I have decided not to repeat the evidence and argument as a whole, but would only focus on those issues I consider relevant.
13. The historical background as mentioned above was considered common cause between the parties.
14. The Applicant was supposed to work on 22 March 2012 and the Respondent refused to pay him wages for the day. The Applicant requested the employer to grant him a day's leave on the day in question, which request was denied.
15. It is evident from reading the Resolution that it deals with certain kinds of leave, namely: annual leave; capacity leave; special leave; unpaid leave; etcetera.
16. Paragraph 7.10 of the Resolution reads:

"Unpaid leave:

- a) If an employee has utilized all her or his paid vacation leave, the employer may grant her or him unpaid leave. Only in exceptional cases shall the employer grant more than 184 days of unpaid vacation leave in a period of 18 months.
- b) An employee shall utilise unpaid leave for absence from work due to:
 - i) arrest, imprisonment or appearance in court on a criminal charge that leads to a conviction; or
 - ii) A criminal sentence.”

It is evident from reading this paragraph that unpaid leave may be taken under certain circumstances. It is my interpretation of this paragraph that it deals with unpaid leave in the case where an employee has exhausted his or her annual leave credits. It also makes provision in a case of absenteeism due to arrest, imprisonment or appearance in court in a criminal case.

17. In the instant case the Applicant have not formally applied for vacation leave and it is also not a case where he utilized all his paid vacation leave. To my mind the Applicant's case is simply a dispute about wages. The Applicant failed to report for work and the Respondent refused to pay him for a day's work. It is trite law and a common law principle that an employee, in terms of employment contract is not entitled to remuneration if he or she does not perform his or her duties. The Applicant would therefore only be entitled to pay or salary if he or she has leave on any given work day. It is evident from the facts that the Applicant did not apply for vacation leave in advance. He only informed the employer on the day and time when he had to report for work that he was unable to attend. Accordingly the employer could not make prior arrangements to spread the work load and to accommodate the Applicant. To my mind therefore the instant dispute does not relate to the interpretation and application of the Resolution. The employer refused to pay the Applicant wages for the day and it is an issue in dispute whether the Applicant was entitled to leave with pay or not. In my view it amounts to a wage dispute which the Applicant should refer to Department of Labour.

AWARD:

18. In the premises I make the following award:

- (1) I find that the instant dispute does not relate to the interpretation and application of a collective agreement, therefore the application is dismissed.
- (2) I make no order as to costs.



ADV J P HANEKOM